

(B) *Indirect employment relationship.* (1) When a physician extender meets the definition of a direct employment relationship in paragraph (e)(2)(ii)(A) of this section with respect to an entity other than the facility itself, and that entity has an agreement with the facility for the provision of nursing services under § 409.21 of this subchapter, the facility is considered to have an indirect employment relationship with the physician extender.

(2) An indirect employment relationship does not exist if the agreement between the entity and the facility involves only the performance of delegated physician tasks under § 483.40(e) of this chapter.

(f) *Recertification requirement fulfilled by utilization review.* A SNF may substitute utilization review of extended stay cases for the second and subsequent recertifications, if it includes this procedure in its utilization review plan.

(g) *Description of procedures.* The SNF must have available on file a written description that specifies the certification and recertification time schedule and indicates whether utilization review is used as an alternative to the second and subsequent recertifications.

[53 FR 6634, Mar. 2, 1988, as amended at 54 FR 37275, Sept. 7, 1989; 58 FR 30671, May 26, 1993; 60 FR 38272, July 26, 1995; 62 FR 46037, Aug. 29, 1997; 63 FR 26311, May 12, 1998; 63 FR 53307, Oct. 5, 1998; 66 FR 39600, July 31, 2001; 70 FR 45055, Aug. 4, 2005; 75 FR 73626, Nov. 29, 2010]

§ 424.22 Requirements for home health services.

Medicare Part A or Part B pays for home health services only if a physician certifies and recertifies the content specified in paragraphs (a)(1) and (b)(2) of this section, as appropriate.

(a) *Certification*—(1) *Content of certification.* As a condition for payment of home health services under Medicare Part A or Medicare Part B, a physician must certify as follows:

(i) The individual needs or needed intermittent skilled nursing care, or physical or speech therapy, or (for the period from July through November 30, 1981) occupational therapy. If a patient's underlying condition or complication requires a registered nurse to ensure that essential non-skilled care

is achieving its purpose, and necessitates a registered nurse be involved in the development, management, and evaluation of a patient's care plan, the physician will include a brief narrative describing the clinical justification of this need. If the narrative is part of the certification or recertification form, then the narrative must be located immediately prior to the physician's signature. If the narrative exists as an addendum to the certification or recertification form, in addition to the physician's signature on the certification or recertification form, the physician must sign immediately following the narrative in the addendum.

(ii) Home health services were required because the individual was confined to the home except when receiving outpatient services.

(iii) A plan for furnishing the services has been established and is periodically reviewed by a physician who is a doctor of medicine, osteopathy, or podiatric medicine, and who is not precluded from performing this function under paragraph (d) of this section. (A doctor of podiatric medicine may perform only plan of treatment functions that are consistent with the functions he or she is authorized to perform under State law.)

(iv) The services were furnished while the individual was under the care of a physician who is a doctor of medicine, osteopathy, or podiatric medicine.¹

(v) The physician responsible for performing the initial certification must document that the face-to-face patient encounter, which is related to the primary reason the patient requires home health services, has occurred no more than 90 days prior to the home health start of care date or within 30 days of the start of the home health care by including the date of the encounter, and including an explanation of why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as

¹As a condition of Medicare Part A payment for home health services furnished before July 1981, the physician was also required to certify that the services were needed for a condition for which the individual had received inpatient hospital or SNF services.

defined in §409.42(a) and (c) of this chapter, respectively.

(A) The face-to-face encounter must be performed by one of the following:

(1) The certifying physician himself or herself.

(2) A physician, with privileges, who cared for the patient in an acute or post-acute care facility from which the patient was directly admitted to home health.

(3) A nurse practitioner or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5) of the Act) who is working in accordance with State law and in collaboration with the certifying physician or in collaboration with an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(4) A certified nurse midwife (as defined in section 1861(gg) of the Act) as authorized by State law, under the supervision of the certifying physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(5) A physician assistant (as defined in section 1861(aa)(5) of the Act) under the supervision of the certifying physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(B) The documentation of the face-to-face patient encounter must be a separate and distinct section of, or an addendum to, the certification, and must be clearly titled and dated and the certification must be signed by the certifying physician.

(C) In cases where the face-to-face encounter is performed by a physician who cared for the patient in an acute or post-acute care facility or by a nonphysician practitioner in collaboration with or under the supervision of such an acute or post-acute care physician and that nonphysician practitioner is not directly communicating to the certifying physician the clinical findings (that is, the patient's homebound sta-

tus and need for intermittent skilled nursing services or therapy services as defined in §409.42(a) and (c) of this chapter), the acute or post-acute care physician must communicate the clinical findings of that face-to-face encounter to the certifying physician. In all other cases where a nonphysician practitioner performs the face-to-face encounter, the nonphysician practitioner must communicate the clinical findings of that face-to-face patient encounter to the certifying physician.

(D) If a face-to-face patient encounter occurred within 90 days of the start of care but is not related to the primary reason the patient requires home health services, or the patient has not seen the certifying physician or allowed nonphysician practitioner within the 90 days prior to the start of the home health episode, the certifying physician or nonphysician practitioner must have a face to face encounter with the patient within 30 days of the start of the home health care.

(E) The face-to-face patient encounter may occur through telehealth, in compliance with Section 1834(m) of the Act and subject to the list of payable Medicare telehealth services established by the applicable physician fee schedule regulation.

(F) The physician responsible for certifying the patient for home care must document the face-to-face encounter on the certification itself, or as an addendum to the certification (as described in paragraph (a)(1)(v) of this section), that the condition for which the patient was being treated in the face-to-face patient encounter is related to the primary reason the patient requires home health services, and why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in §409.42(a) and (c) respectively. The documentation must be clearly titled and dated and the documentation must be signed by the certifying physician.

(2) *Timing and signature.* The certification of need for home health services must be obtained at the time the plan of care is established or as soon thereafter as possible and must be signed

and dated by the physician who establishes the plan.

(b) *Recertification*—(1) *Timing and signature of recertification*. Recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed and dated by the physician who reviews the plan of care. The recertification is required at least every 60 days when there is a—

(i) Beneficiary elected transfer; or

(ii) Discharge and return to the same HHA during the 60-day episode.

(2) *Content and basis of recertification*. The recertification statement must indicate the continuing need for services and estimate how much longer the services will be required. Need for occupational therapy may be the basis for continuing services that were initiated because the individual needed skilled nursing care or physical therapy or speech therapy. If a patient's underlying condition or complication requires a registered nurse to ensure that essential non-skilled care is achieving its purpose, and necessitates a registered nurse be involved in the development, management, and evaluation of a patient's care plan, the physician will include a brief narrative describing the clinical justification of this need. If the narrative is part of the certification or recertification form, then the narrative must be located immediately prior to the physician's signature. If the narrative exists as an addendum to the certification or recertification form, in addition to the physician's signature on the certification or recertification form, the physician must sign immediately following the narrative in the addendum.

(c) [Reserved]

(d) *Limitation of the performance of physician certification and plan of care functions*. The need for home health services to be provided by an HHA may not be certified or recertified, and a plan of care may not be established and reviewed, by any physician who has a financial relationship as defined in § 411.354 of this chapter, with that HHA, unless the physician's relationship meets one of the exceptions in section 1877 of the Act, which sets forth general exceptions to the referral prohibition related to both ownership/investment and compensation; exceptions to

the referral prohibition related to ownership or investment interests; and exceptions to the referral prohibition related to compensation arrangements.

(1) If a physician has a financial relationship as defined in § 411.354 of this chapter, with an HHA, the physician may not certify or recertify need for home health services provided by that HHA, establish or review a plan of treatment for such services, or conduct the face-to-face encounter required under sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act unless the financial relationship meets one of the exceptions set forth in § 411.355 through § 411.357 of this chapter.

(2) A Nonphysician practitioner may not perform the face-to-face encounter required under sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act if such encounter would be prohibited under paragraph (d)(i) if the nonphysician practitioner were a physician.

[53 FR 6638, Mar. 2, 1988; 53 FR 12945, Apr. 20, 1988; 56 FR 8845, Mar. 1, 1991, as amended at 65 FR 41211, July 3, 2000; 66 FR 962, Jan. 4, 2001; 70 FR 70334, Nov. 21, 2005; 72 FR 51098, Sept. 5, 2007; 74 FR 58133, Nov. 10, 2009; 75 FR 70463, Nov. 17, 2010; 76 FR 9503, Feb. 18, 2011; 76 FR 68606, Nov. 4, 2011; 77 FR 67163, Nov. 8, 2012]

§ 424.24 Requirements for medical and other health services furnished by providers under Medicare Part B.

(a) *Exempted services*. Certification is not required for the following:

(1) Hospital services and supplies incident to physicians' services furnished to outpatients. The exemption applies to drugs and biologicals that cannot be self-administered, but not to partial hospitalization services, as set forth in paragraph (e) of this section.

(2) Outpatient hospital diagnostic services, including necessary drugs and biologicals, ordinarily furnished or arranged for by a hospital for the purpose of diagnostic study.

(b) *General rule*. Medicare Part B pays for medical and other health services furnished by providers (and not exempted under paragraph (a) of this section) only if a physician certifies the content specified in paragraph (c)(1), (c)(4) or (e)(1) of this section, as appropriate.

(c) *Outpatient physical therapy and speech-language pathology services*—(1)